



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Washington, D. C. 20226

Number: 86-5

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GRAY MARKET (PARALLEL) IMPORTS

Proprietors of Distilled Spirits Plants, Importers and
Others Concerned:

PURPOSE: Numerous inquiries from trade associations and industry members alike point out that some confusion may exist as to the legal role of this Bureau in the "gray market" imports controversy. This circular will serve to clarify our position in this matter.

BACKGROUND: Over the past several years, the alcohol beverage industry has witnessed the emergence of the "gray market" or "parallel" importer. A "gray market" importation occurs when an importer imports authentic premium foreign wines or distilled spirits despite the existence of an exclusive distribution agreement between the foreign trademark owner (producer) and its authorized U.S. importer (distributor). Many such products are packaged and labeled for the European or other foreign markets and do not conform with U.S. regulatory requirements. The labeling of such products has been brought into conformity with U.S. regulatory requirements by affixing a strip label containing the mandatory information.

Gray market imports should not be confused with counterfeit imports which enter the U.S. under fraudulent pretenses, i.e. where the bottle labels do not accurately describe the contents of the bottle. Law and regulations are specific as to the Bureau's treatment of this type of illegitimate import.

DISCUSSION: ATF involvement in the "gray market" controversy is restricted since federal regulations under the Federal Alcohol Administration Act make no distinction between the activities of the gray market importer and the authorized importer (distributor). ATF's involvement in this controversy has been limited for the most part to investigating complaints by industry regarding mis-labeled gray market imports.

The Federal Alcohol Administration Act prohibits the removal from Customs custody for consumption in the U.S. any alcohol beverages unless such products are bottled, packaged, and labeled in conformity with U.S. regulations. In addition, the Act vests in the Bureau the authority to prohibit from appearing on any label any statement that is false or untrue in any particular, or that irrespective of falsity, directly, or by ambiguity, omission, or inference tends to create a misleading impression regarding the product. The Bureau is specifically charged with the responsibility of ensuring that the label not only prevents consumer deception, but also provides the consumer with adequate information as to the identity and quality of the product. The Act also requires that as a condition to the release of such products from Customs custody, there shall be furnished certificates, where applicable, issued by foreign governments which certify as to the products' origin and authenticity.

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In response to Industry concerns, the Bureau has intensified its efforts in the area of label approval to ensure product integrity for all imported products. Utilizing ATF's various inspection programs, imports will be closely scrutinized for mandatory label information and for prohibited information in accordance with 27 CFR Parts 4, 5, and 7.

It should be stressed that the issuance of a certificate of label approval by ATF in no way constitutes trademark protection for that label. For regulations covering the restrictions placed on the importation of articles bearing recorded trademarks and trade names, the permittee is directed to 19 CFR § 133.21 of the US Customs regulations.

ATF is also currently reviewing all country of origin certification requirements for imported wines and distilled spirits. ATF will be working closely with Customs to establish new procedures, if needed, or re-enforcing existing requirements to ensure that all imports are properly certified as to their origin and authenticity, if applicable, i.e. country of origin issues such a certificate of origin and authenticity.

SUMMARY: In Compliance with the mandates of the FAA Act and to insure product integrity and authenticity, the Bureau of Alcohol, Tobacco and Firearms reemphasizes that it will hold all importers of alcohol beverages to the same standard of compliance with all U.S. laws and regulations.

INQUIRIES: ~~Inquiries concerning this circular should~~ be referred to its number and be addressed to the Associate Director (Compliance Operations), ATTN: Chief, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

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